IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4771 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAFIKBHAI VOHRA PROP ADARSH TOBACCO CO. AND OTHERS
Versus
STATE OF GUJARAT AND OTHERS

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Appearance :
MR YS LAKHANI for MS BANNA S DUTTA for applicants. MR VAIBHAV A VYAS for applicants.
MR PRADIP BHATE, APP for Respondent No. 1.
RULE NOT RECD BACK for Respondent Nos. 2 - 3.
MR HS MUNSHAW for Respondent No. 3.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 19/01/2006

ORAL JUDGMENT

By filing this application, the applicants have prayed that M.Case No.42 of 2003 registered before learned Judicial Magistrate, First Class,

Savli, may be quashed. It is the case of the applicants that complaint filed by the complainant is false one and it is filed at a belated stage. It is also the case of the applicants that though cash amount was paid to the complainant by the accused yet aforesaid complaint is filed.

On behalf of the investigating agency, Mr.Pradip Bhate, learned APP, submitted that since the matter is pending before this Court, investigating officer has not proceeded further with investigation and the investigation is still pending. He further submitted that investigating officer will go through all material as well as documentary evidence available on record and after completion of investigation if it is found that no case is made out against the applicants, appropriate report will be filed and if it is found that the there is a prima facie case against the applicants, charge sheet will be filed against the applicants. He further submitted that appropriate report or charge sheet will be filed by the investigating officer in accordance with law.

In my view, whether the amount is paid in cash as per the receipt at page – 11, Annexure-B, is a question which is required to be decided by the investigating officer at the time of investigating the case. Investigating officer shall also take into account the receipt produced at page – 11 while forming an opinion about the alleged involvement of the applicants in connection with the aforesaid case. Suffice it to say that documentary evidence as well as other materials on record will be considered by the investigating officer before whom investigation is pending. Considering the fact that investigation is pending since long, investigating officer is directed to complete the investigation as early as possible and latest within a period of one month from today.

At this stage, Mr.Lakhani, learned advocate for the applicants submitted that in order to see that investigation is completed as early as possible he is not pressing this application and seeks permission to withdraw this application at this stage, with a liberty to file fresh petition in case any adverse report or charge sheet is submitted against the applicants.

In view of what is stated herein above, permission to withdraw this application is granted. Accordingly, this application is disposed of as withdrawn. Rule is discharged. It is clarified that this Court has not expressed any opinion on the merits of the case. It is further clarified that after completion of investigation if any adverse report or charge sheet is filed against the applicants and if any fresh petition is filed to challenge the same, the applicants will be entitled to argue all the points available to them as per law.

(P.B.MAJMUDAR, J.)

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